



## Memorandum

To: Members of Council  
From: Chief Administrative Officer Jeri E. Chaikin  
cc: Mayor David E. Weiss  
Date: March 2, 2023  
Re: Lease Agreement with the Early Childhood Enrichment Center Inc. for the Shaker Family Center Building at 19824 Sussex Road for the period 1/1/23 through 6/30/24

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The Early Childhood Enrichment Center (ECEC) has leased the Shaker Family Center (SFC) building at 19824 Sussex Road for the period January 1, 2021 through December 31, 2022. ECEC has been providing care and education for over 40 years to children ages 18 months to kindergarten. ECEC subleases space to Carol Nursery School which has been in the SFC building since 1987. Carol Nursery School offers preschool for children 2½ to 5 years old.

The terms of the proposed lease with ECEC include:

- Term: January 1, 2023 through June 30, 2024.
- Renewal: The City shall give written notice to ECEC of its intent to renew or not renew the lease for an additional term by September 30, 2023. Any additional term length is to be determined.
- Rent: ECEC shall pay \$1/year in rent.
- For calendar year 2023 the City will provide a flat fee subsidy of \$200,000 to pay for items listed in Exhibit 2 of the lease (attached).
- ECEC will deposit additional “rent,” sublessee rent, and sublessee utility reimbursements (which ECEC states will total \$195,656) in an account to pay for their responsibilities in Exhibit 2, Section A.
- The City’s \$200,000 in subsidy funds will be placed in a second account for ECEC to pay for ECEC responsibilities listed in Exhibit 2, Section B.
- ECEC shall not undertake any maintenance and/or repair that is estimated to cost more than \$10,000 without first obtaining the City’s approval in writing. The City shall work with ECEC to determine whether a replacement is warranted instead of the particular planned maintenance or repair that is estimated to exceed \$10,000. ECEC shall make best efforts to provide the City with three written quotes for any item reviewed under this subsection.
- If an expenditure exceeding \$1,000 is required and the City’s \$200,000 has been exhausted, the City will decide whether or not the maintenance or repair item can be deferred and if not the City will pay for it.

The proposed lease allows for the City and ECEC to discuss an additional subsidy for 2024 and any renewal terms, but any such subsidy will be at the City’s sole discretion. Discussions on any 2024

subsidy would begin by September 30, 2023 and any subsidy funds would be included in the City's 2024 budget with the approval of Council.

Council is requested to approve the lease of the SFC building with ECEC for the period January 1, 2023 through June 30, 2024 with the terms described above. This is requested to be approved on first reading and as an emergency because the prior lease expired on December 31, 2022 and funds are needed to maintain and repair the property.

**SHAKER FAMILY CENTER  
LEASE AGREEMENT  
BETWEEN THE  
CITY OF SHAKER HEIGHTS  
AND THE  
EARLY CHILDHOOD ENRICHMENT CENTER, INC.**

THIS LEASE AGREEMENT is made effective as of the **1st day of January, 2023** ("Effective Date"), by and between the **CITY OF SHAKER HEIGHTS**, an Ohio municipal corporation, 3400 Lee Road, Shaker Heights, Ohio 44120, the Lessor (hereinafter the "**City**") and **EARLY CHILDHOOD ENRICHMENT CENTER, INC.**, an Ohio nonprofit corporation, located at the Shaker Family Center, 19824 Sussex Road, Shaker Heights, Ohio 44122, the Lessee (hereinafter "**ECEC**"), pursuant to the authority of Shaker Heights Ordinance No. 23-16, enacted on March 7, 2023.

WHEREAS, the City is the owner of the property and improvements located at 19824 Sussex Road, Shaker Heights, Ohio as depicted on **Exhibit 1**, which is attached hereto and incorporated herein ("Shaker Family Center" or "SFC"); and

WHEREAS, the City entered into a lease agreement with ECEC on January 1, 2021, for a 2-year period ending December 31, 2022; and

WHEREAS, the parties to this Agreement desire to enter into a Lease renewal that continues the use of the Shaker Family Center for early childhood and family education and enrichment, including the subletting of portions of said property to another tenant or tenants whose programs are consistent with the aforementioned purpose of the facility.

NOW, THEREFORE, in consideration of the promises herein set forth, the City and ECEC hereby agree as follows:

1. Demised Premises. The City does hereby demise and let to ECEC, and ECEC does hereby lease from the City, all of the SFC Facility (Exhibit 1).

2. Term and Renewal.

A. Term. The term of this Lease Agreement (hereinafter "Lease" or "Lease Agreement") shall be for eighteen months, commencing on **January 1, 2023** (the "Commencement Date"), and expiring on **June 30, 2024**, unless sooner terminated or extended as herein provided ("Term"). Both the City and ECEC mutually acknowledge that a common goal of said parties is to operate the SFC Facility, consistent with the purposes set forth in this Lease Agreement. Should either party fail to perform its obligations hereunder, then the non-defaulting party may terminate this Lease, as further provided herein.

B. Renewal Terms. The parties may mutually agree to renew this Lease for a subsequent term or terms after the Term ("Renewal Terms"), which term(s) shall be negotiated. No later than **September 30, 2023**, the City shall give written notice to ECEC of its intent to renew or not renew the Lease term for an additional term, which term length shall be as agreed upon by the parties. ECEC shall inform the City in writing no later than **September 30, 2023**, whether it intends to renew or end the Lease. In the event that the City decides to not renew the lease, it agrees to extend the period of the current lease to **December 31, 2024**.

3. Rental and Other Consideration; City Subsidy.

A. For the purpose of funding the operations of the SFC Facility, two separate bank accounts will be established (SFCBA1 and SFCBA2). All rents, utility reimbursements and City subsidies and funding will be deposited into these accounts as specified below. Additionally, any rent collected from sublessees will be deposited into SFCBA1. ECEC, as building manager will disburse funds from these accounts for

the purpose of maintaining SFC operations. Monthly SFCBA reports will be generated and made available to both ECEC and the City.

B. ECEC agrees to pay to the City, as fixed rent for the SFC Facility, the sum of ONE DOLLAR (\$1.00) for the Term of the Lease, payable in advance within thirty (30) days after the Effective Date of this Lease, as set forth above, and of any renewal term. The rental payment hereunder shall be made by ECEC to the City by check or draft payable to the order of the City and delivered to the City either personally or by mail at 3400 Lee Road, Shaker Heights, Ohio 44120, or such other address as the City shall determine and for which the City provides notice to ECEC.

C. For the calendar year 2023, the City shall provide a flat fee subsidy of \$200,000 to pay for items listed in **Exhibit 2**, which is attached hereto and incorporated herein, as Lessee's Responsibilities. This amount shall be paid in quarterly payments of \$50,000 each, and will be deposited by ECEC into SFCBA2. The first quarterly payment shall be made within 14 days after the full execution of this Lease. Thereafter, the quarterly payments shall be made at the beginning of each quarter, after Lessee sends an invoice for each such payment on or after the 1<sup>st</sup> day of each quarter, and after Lessee sends copies of invoices and reports of maintenance and repairs made by Lessee in the previous quarter, including capital maintenance and repairs, as listed in Exhibit 2. At the end of each Quarter ECEC will send a report including copies of invoices for maintenance and repairs made by Lessee in the previous quarter, including capital maintenance and repairs, as listed in Exhibit 2. The Parties agree to discuss 2024 potential subsidies by **September 30, 2023**.

4. Use of Premises.

A. ECEC shall use and operate the SFC Facility only for early childhood and family education, enrichment and related purposes, including but not limited to child day care, nursery school, special education and services for disabled children (including those with mental and physical disabilities), education and training for parents, conferences, meetings, fund-raising events, community use, and any other early childhood and family educational and enrichment activity ("Permitted Uses").

B. ECEC shall use the SFC Facility in a lawful manner and comply with all laws and requirements of all governmental authorities applicable to the SFC Facility and to the use thereof.

C. ECEC shall develop programs or sublet space to other non-profit organizations or nonprofit corporations whose programs are consistent with the uses permitted for the SFC Facility as set forth in this Lease Agreement, and any sublease entered into by ECEC shall comply with the provisions of this Lease Agreement. ECEC may undertake and operate a fund-raising program through which funds and property may be solicited, by gift, bequest or otherwise, for the purpose of facilitating early childhood education and related uses. No for-profit business may sublet in the SFC Facility without the prior written approval of the City. No entity, whether non-profit or for-profit, that is located at the SFC Facility may sell products or services to the public or to other entities, other than services provided at the SFC Facility related to the Permitted Uses, and products sold to the public as part of a fundraising effort for ECEC or its sub-tenants.

5. Maintenance of the Premises.

A. ECEC shall maintain and operate the SFC Facility at its cost, including, but not limited to, all interior areas of the building, and the Learning Garden on the exterior, as set forth in this paragraph. These obligations include building management, as well as items listed in Exhibit 2. ECEC may determine the method of handling these obligations, including by contracting for such services, and hiring of a building management company, in its discretion.

(i) To pay for the activities listed in Exhibit 2, under Lessee's Responsibilities, Section A. Basic Services, Maintenance, Supplies, ECEC will use funds that it has deposited into the SFCBA1 through its rent, sublessee rent and utility reimbursements.

(ii) To pay for the activities listed in Exhibit 2, under Lessee's Responsibilities, Section B. Major Building Systems Maintenance & Repair, ECEC will use funds deposited into SFCBA2 through the City subsidy.

ECEC is responsible for any shortages in SFCBA1 and SFCBA2 required to cover the costs of its responsibilities. Any overages will be left in SFCBA1 and SFCBA2 for future needs.

B. ECEC shall not undertake any maintenance and/or repair that is estimated to cost more than \$10,000 without first obtaining the City's approval in writing. The City shall work with ECEC to determine whether a replacement is warranted instead of the particular planned maintenance or repair that is estimated to exceed \$10,000. ECEC shall make best efforts to provide the City with three written quotes for any item reviewed under this subsection.

C. If an expenditure exceeding \$1,000 for a particular maintenance and/or repair is required for any of items listed in Exhibit 2, under Lessee's Responsibilities, Section B. Major Building Systems Maintenance & Repair, and if such expenditure will exceed the total amount of the funds deposited in SFCBA2, and the funds anticipated to be deposited in the accounts during the remaining Lease term, ECEC shall notify the City in writing, and the City shall determine, in its sole discretion, after consultation with ECEC, whether the maintenance and/or repair of the item may be deferred to a later date, and if it cannot be deferred, the City may treat the item as a City responsibility as listed in Exhibit 2. ECEC may request an advance of the \$50,000 quarterly payments, which the City may approve in its discretion, which shall not be unreasonably denied.

D. Except as provided in C. above, the City shall pay for and undertake only those capital replacement costs of the Shaker Family Center building and grounds that are not listed as Lessee's Responsibilities and that meet the requirements of City Responsibilities, as set forth in Exhibit 2. The City reserves the right to alter any areas of the exterior grounds, as long as such alteration does not unduly limit or negatively impact the use of the SFC Facility by ECEC or its sub-tenants under the Lease.

E. ECEC or its subtenants shall be responsible for the maintenance, repair, condition, alteration or replacement of any and all equipment, furnishings, and other personal property that are provided by ECEC or its subtenants for their use in, on or around the SFC Facility and its grounds, including any camera system and/or air conditioning units installed by ECEC or its subtenants. ECEC shall maintain or cause its subtenants to maintain all playground equipment owned by ECEC or its subtenants and related fenced-in areas as designated on Exhibit 1. ECEC shall maintain or cause its subtenants to maintain, at their own expense, the Learning Garden owned by ECEC or its subtenants as designated on Exhibit 1. Nothing contained herein shall prohibit ECEC's subsequent removal of the Learning Garden at the sole option of ECEC and at the expense of ECEC and its subtenants. ECEC shall provide periodic training to its tenants, as necessary, in order to ensure that they understand the workings of and their obligations with regard to any equipment and facilities of which they have use, including, without limitation, plumbing fixtures and what articles may and may not be placed in toilets and sinks. ECEC shall hold its tenants responsible for the costs of damage to any equipment or facilities, such as plumbing fixtures, that result from misuse. ECEC or its subtenants shall also be responsible for any costs of evening, weekend or holiday activities whereby ECEC and/or its sub-tenants rent, for pay or for free, the SFC Facility for private events.

F. ECEC shall be responsible to inform the City whenever snow and ice removal may be needed for activities at the SFC Facility on weekends (i.e., Saturdays and Sundays), holidays, and after regular hours (i.e., before 6:00 a.m. and after 10:00 p.m., Monday through Friday) (collectively, "Non-regular Hours"), and if City crews are working, service will be provided to the SFC Building. ECEC shall be responsible for coordinating the opening of the SFC Facility building and the closing and locking of the SFC Facility building, and shall be responsible for any separate charge or expense for any cleaning or janitorial services needed during Non-regular Hours

6. ECEC's Responsibility as to Insurance, Liability and Indemnification.

A. ECEC hereby indemnifies and saves harmless the City, its officers, agents, and employees from any and all claims and liabilities arising from or in connection with the acts or omissions of ECEC, its employees, agents or contractors with respect to ECEC's obligations under this Lease, or ECEC's failure to maintain the insurance required pursuant to section 6(B) below.

B. ECEC shall, at its own expense and without in any way limiting the indemnification set forth hereinabove, maintain during the term of this Lease Agreement a policy or policies of public liability insurance, in a form and with a company or companies reasonably acceptable to the City, against claims for death of or injury to persons and damage to personal property arising out of or in connection with its use or occupancy of the SFC Facility, and naming the City as additional insured. Such public liability insurance shall have limits of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit

or such greater amount as may be reasonably requested from time to time by the City. If the City requests such increased coverage and ECEC does not concur in such request, the City and ECEC shall undertake good faith negotiations to attempt to reach an agreed-upon coverage level. However, if no greater coverage level can be agreed upon, the City and ECEC each reserve the right to terminate this Lease Agreement. The policy shall be an "occurrence" policy unless the City approves another form of coverage in writing in advance. ECEC agrees, when so requested by the City, to furnish satisfactory evidence to the City that such coverage is being maintained and that all premiums have been paid, and will also furnish to the City, if so requested, endorsements of any and all policies evidencing the required coverage, and that such coverage will not be cancelled or reduced without at least thirty (30) days' prior written notice to the City. ECEC further agrees to insure whatever equipment and furniture it may place on the SFC Facility for fire, theft, and damage by storm for itself. Each party shall obtain waiver of subrogation clause(s) in favor of the other party in such party's insurance policy(ies) covering casualty and liability if available.

7. The City's Obligations as to Property Insurance, Casualty Loss or Damage.

A. The City will keep the SFC Facility insured through a good and responsible company authorized to do business in the State of Ohio against loss or damage by fire or other casualty comprehended by standard extended coverage endorsements to the full amount of the fair market value thereof.

B. The City shall not be liable to ECEC for any damage to or destruction of ECEC's property, or the property of any subtenant, invitee, or licensee, located in the SFC Facility, nor for damage to or destruction of any improvements to the SFC Facility made by ECEC or its subtenants. The City shall not be liable for any inconvenience or loss of rental, grants or other funds suffered by ECEC, its subtenants, invitees, or licensees as a result of fire or other casualty-causing damage to or destruction of the SFC Facility.

C. If the SFC Facility is destroyed, in whole or in part, the City shall notify ECEC in writing within 30 days of such casualty whether the City will promptly repair the SFC Facility to its condition prior to the casualty. If the City elects not to repair the SFC Facility or fails to give any notice, then ECEC may at its sole option elect to terminate this Lease without liability to the City or, in the case of the partial destruction of the SFC Facility, continue to lease the remainder of the SFC Facility and the City shall cause such repairs to be made as to make the balance of the SFC Facility fit for occupancy. Notwithstanding the foregoing, the City shall be obligated to repair any casualty damage that costs less than \$150,000 to repair.

8. Mechanics' Liens and Damage Suits. If a notice of mechanics' lien or a lien upon public funds is filed against the SFC Facility for, or purported to be for, labor or material contracted for by ECEC (other than for work undertaken on behalf of the City), ECEC agrees forthwith to discharge the same by payment, bonding or otherwise; and if ECEC shall fail to take such action as shall cause such lien to be discharged within thirty (30) days after notification of the filing of such notice, the City may cause such lien to be discharged by bonding or by paying the amount of such alleged lien, or otherwise, and ECEC shall repay to the City any amount so paid, and any costs and expenses incurred by the City in that connection shall be collectible as additional rent hereunder. ECEC further agrees to indemnify and protect the City from and against all loss, cost, damage, or expense which may be incurred by adjoining property owners, or by any other person or person, for or by reason of work contracted for by ECEC in or to the SFC Facility or by ECEC' use of the SFC Facility (other than for work undertaken on behalf of the City), provided such indemnity shall not cover any loss, cost, damage or expense relating to the City's actions, obligations or responsibilities under this Lease. ECEC shall have the right to contest the validity or amount of any such lien or any such claim for damage by appropriate proceedings, but upon the final determination thereof, ECEC shall immediately pay any judgment rendered, with all proper costs and charges.

9. Right of ECEC to Defend Claims. It is mutually understood and agreed that, notwithstanding anything herein to the contrary, ECEC at all times during the term of this Lease Agreement, shall have the right to defend or otherwise contest, at its own expense and in its own name, or in the name of the City, after notice to and consent by the City, including the approval of legal counsel, to such extent as ECEC may deem necessary, any suits, actions, or claims filed or made by any third party which may in

the judgment of ECEC threaten in any way its possession or right of possession of the SFC Facility, but nothing herein contained shall restrict the City also, at the City's sole cost and expense, from defending, contesting, or participating in the defense or contest of any such suit or action if, in the judgment of the City, the interests of the City shall so require.

10. ECEC Not an Employee of the City. ECEC, its subtenants and the employees of all of them, are not and shall not be deemed or construed to be employees of the City, or a partner or joint venture of the City.

11. Sublease and Assignment.

A. Subject to the provisions of this Section, ECEC shall be responsible for the management of all rental space and subleases at the SFC Facility.

B. ECEC shall not assign this Lease Agreement or any interest in this Lease Agreement without the prior written consent of the City.

C. ECEC may not sublet the SFC Facility, or enter into a written instrument permitting the use thereof, without the consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. All subleases must have an expiration date no later than the end of this prime Lease. If (i) space in the SFC Facility becomes vacant and the tenant is no longer obligated to pay rent and such space is not re-leased by ECEC within one hundred eighty (180) days of the date it becomes vacant and the tenant is no longer obligated to pay rent, or (ii) the Annex (i.e., east wing of the SFC Facility as shown on Exhibit 1) space becomes vacant, then the City may direct ECEC to sublease the space to another sub-lessee regardless of whether the tenant provides services constituting Permitted Uses. If, pursuant to the prior sentence, the City directs ECEC to sublease any such space to a subtenant on terms less favorable than those of all other subleases in the SFC Facility, then ECEC may at its option terminate this Lease.

D. The City shall have the right and the obligation to take over the subleases for the balance of the sublease terms if ECEC cancels or terminates this Lease Agreement for any reason or if the City terminates the Lease Agreement for any reason pursuant to the terms hereof.

E. ECEC and each non-public sub-lessee shall provide a copy of its annual budget and financial statement to the City, as well as semi-annual reports (or quarterly, if routinely prepared) showing revenues and expenses, including budgeted versus actual.

F. The City hereby consents to the existing sublease with Carol Nursery.

12. Termination.

A. Unless waived by the non-defaulting party, either of the City and ECEC may terminate this Lease Agreement if the other party fails to perform any or all of its duties hereunder and fails to cure any default within one hundred twenty (120) days of written notice including, but not limited to, the failure of ECEC and sub-lessees to pay all building operating expenses other than those to be paid by the City. In addition:

(i) The City may terminate this Lease Agreement, at its option, if the SFC Facility is more than fifty percent (50%) vacant for longer than 180 days (this provision does not apply to a vacancy due to a pandemic or similar health emergency); or

(ii) The City may terminate this Lease Agreement, at its option, if a casualty loss of greater than ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000), not covered by insurance or any self-insurance retainage, occurs (provided such failure to provide insurance was not a violation of the Lease terms), or a casualty loss that would require major renovation or reconstruction of more than twenty-five percent (25%) of the gross square footage of the SFC Facility, whether or not such casualty loss is covered by insurance.

(iii) The City may terminate this Lease Agreement if the City's Council fails to appropriate funds to meet the City's obligations to maintain the Building.

B. If this Lease Agreement is terminated as permitted pursuant to this Section or as otherwise provided herein, each party shall be released from any further obligation hereunder.

C. The waiver of any breach of covenant or condition herein contained shall not be taken to

be a waiver of any subsequent breach or condition, nor shall the failure of either party to enforce its rights or seek remedies upon default of the other party prejudice or affect the rights and remedies of the non-defaulting party in the event of any subsequent default by the other party.

D. Upon termination of this Lease Agreement by the City as herein provided, the City may exclude ECEC from the SFC Facility and take possession thereof.

E. If the City terminates this Lease Agreement based on ECEC's default:

(i) The City has a right to retain any personal property of ECEC located in the SFC Facility that is reasonably necessary to operate the SFC Facility, subject to any Grant conditions or donor restrictions.

(ii) ECEC shall license to the City the exclusive right to use the name "Shaker Family Center" solely in connection with the City operation of the SFC Facility so long as at least 50% of the rentable area (excluding common areas) in the SFC Facility is used for Permitted Uses.

F. ECEC acknowledges, and agrees that each sublease shall also contain an acknowledgement of the sub-lessee thereunder, that if the Lease is terminated or non-renewed by either the City or ECEC, pursuant to the terms hereof, then upon the termination or expiration of the sublease, the City shall have no obligation whatsoever to provide other facilities and/or financial support for early childhood, family education, enrichment or related purposes, including but not limited to child day care, nursery school, special education and services for disabled children.

13. Strikes or Other Unusual Circumstances. The City and ECEC shall not be liable for any failure to perform the services or other conditions to be fulfilled by it by reason of strikes, acts of Nature, acts of other governmental authorities or any other cause beyond its control.

14. Notices. All notices, consents and formal requests or demands required or appropriate hereunder shall be personally delivered, sent by a nationally recognized overnight carrier, or sent by registered or certified mail and shall be deemed to have been served or given when personally delivered or upon acknowledged receipt. Notices to the City may be addressed to the Chief Administrative Officer of the City at 3400 Lee Road, Shaker Heights, Ohio 44120, or to such other person and place as the City designates in writing; and notices to ECEC may be addressed to the Director of ECEC at 19824 Sussex Road, Shaker Heights, Ohio 44122, or to such other person and place as ECEC may designate in writing. ECEC at all times shall have one designated representative with whom the City will have contact, including someone to contact in emergencies and after regular hours.

15. Successor and Assigns. Subject to the provisions of Paragraph 10, this Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

16. Vacation and Re-entry.

A. Subject to the terms of any sublease, ECEC shall, on the last day of the term hereof or upon any earlier termination of this Lease, or upon any re-entry by the City pursuant to the provisions herein contained, cease using and peaceably vacate the SFC Facility and adjacent areas and shall leave, or cause to be left, the SFC Facility in good order, condition, and repair, excepting reasonable ordinary wear and tear and damage by fire or other unavoidable casualties.

B. The City shall have the right to cause ECEC to temporarily vacate the SFC Facility, or any portion thereof, necessary in order to make capital improvements and/or repairs thereto. Except in the case of an emergency repair, the City shall provide at least one hundred eighty (180) days prior written notice to ECEC, and shall use its best efforts to provide sufficient notice as may be necessary for ECEC and/or its subtenants to maintain proper licensing and sufficient notice for ECEC and/or its subtenants to find an appropriate alternative location. Notice of emergency repairs shall be given by the City to ECEC as promptly, and in such form, as circumstances permit. The City shall use its best efforts to minimize disruption to the use of the SFC Facility by ECEC and its sub-tenants during the making of any capital improvements. The City will consult with ECEC in a reasonable time after the City determines capital improvements are needed to discuss the impact on the use of the SFC Facility, and potential reasonable



and affordable measures that could be taken to minimize disruption. If an improvement or repair will require that the SFC Facility, or any portion thereof, be vacated for a period exceeding fourteen (14) days, the City will make a good faith effort to find alternative space in another facility for ECEC and/or its subtenants to be used during the period that the SFC Facility is vacated. The provisions herein do not prohibit ECEC and the City from making alternative notice and other arrangements regarding vacation of the SFC Facility as may be mutually agreed upon by the parties.

17. Notice of Asbestos and Lead-Based Paint. ECEC acknowledges that it has been notified that there is asbestos and lead-based paint located in the building at the SFC Facility. The City shall, at its expense, comply with all federal, state and municipal laws, rules, regulations, codes, ordinances and orders regarding the removal or encapsulation of such asbestos and lead-based paint.

18. Quiet Enjoyment. The City hereby covenants to and with ECEC that if ECEC will not be in default hereunder beyond any and all applicable notice and cure periods, ECEC will have the peaceable possession and quiet enjoyment of the SFC Facility without let or hindrance of any person or persons claiming title thereto or interest therein.

19. Merger. This Lease Agreement, and the documents or instruments referred to herein, embodies the entire agreement and the understanding of the parties hereto in respect of the subject matter contained herein. The parties have not relied upon any promises, representations, warranties, agreements, covenants, or undertakings, other than those expressly set forth or referred to herein. This Lease Agreement supersedes the Current Lease, as well as all other prior or existing agreements, expired or unexpired, and any and all prior or existing understandings between the parties with respect to such subject matter.

20. Governing Law. This Lease Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, applicable to agreements made and to be performed entirely within such state.

21. Headings. The headings used herein are for purposes of convenience only and shall not be used in construing the provisions hereof.

22. Invalidity and Severability. If any provision or portion of this Lease Agreement is held to be unenforceable or invalid, the remaining provisions and portions thereof shall nevertheless be given full force and effect, and the parties agree to negotiate in good faith, a substitute valid provision which most nearly effects the parties' intent in entering into this Lease Agreement. Without limiting the foregoing, it is expressly understood and agreed that each and every provision of this Lease Agreement which provides for a limitation of liability, disclaimer of warranty or exclusion of damages is intended by the parties to be severable and independent of any other such provision. Further, in the event that any remedy hereunder is determined to have failed of its essential purpose, all limitations of liability and exclusions of damages shall remain in effect.

Authorized representatives of the parties herein have signed this Lease Agreement as of the dates set forth below.

**EARLY CHILDHOOD ENRICHMENT CENTER, INC.**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

And By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**THE CITY OF SHAKER HEIGHTS**

By: \_\_\_\_\_

David E. Weiss, Mayor

Date: \_\_\_\_\_

The sum of \$ \_\_\_\_\_ is on and after (date) \_\_\_\_\_ in the City Treasury or in process of collection, to the credit of Fund # \_\_\_\_\_, and not appropriated for any other purpose. Purchase Order No. \_\_\_\_\_.

By: \_\_\_\_\_

John Potts, Director of Finance

Approved as to form:

\_\_\_\_\_  
William M. Ondrey Gruber, Director of Law

\_\_\_\_\_  
Date

**STATE OF OHIO  
COUNTY OF CUYAHOGA**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_ as \_\_\_\_\_ and by \_\_\_\_\_ as \_\_\_\_\_ of ECEC of Northeast Ohio, an Ohio not-for-profit corporation, on behalf of the corporation, who acknowledged that the same is the free act of the corporation. No oath or affirmation was provided by the signer for this act.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed name of Notary Public)  
My commission expires:

**STATE OF OHIO  
COUNTY OF CUYAHOGA**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by David E. Weiss as Mayor of The City of Shaker Heights, a municipal corporation, on behalf of the City. No oath or affirmation was provided by the signer for this act.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed name of Notary Public)  
My commission expires:

**Attached Exhibits:**

**Exhibit 1** – Drawing of Shaker Family Center Building and Grounds

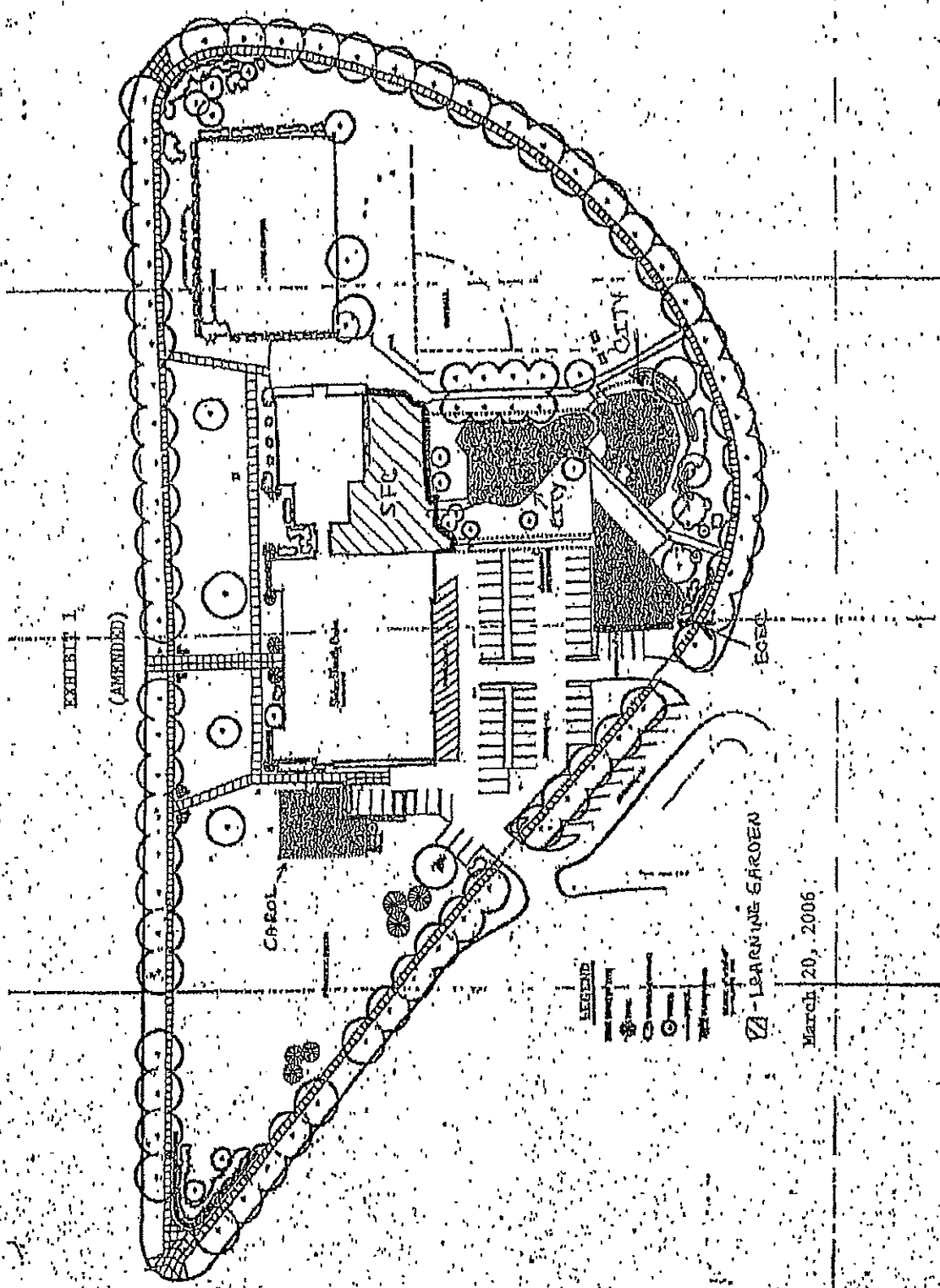
**Exhibit 2** – Lessee’s Responsibilities:

- A. Basic Services, Maintenance, Supplies;
  - B. Major Building Systems Maintenance & Repair;
- and City’s Responsibilities.

Cont22/SFC/0301-ECEC-2023-Lease

**EXHIBIT 1**  
**SFC FACILITY**

(SEE ATTACHED)



# EXHIBIT 2

## Lessee's Responsibilities

### A. Basic Services, Maintenance, Supplies

Lessee shall be responsible for all of the following tasks and supplies at its cost.

1. Maintain stock levels (inventory & order)
  - Paper supplies
    - Toilet paper
    - Paper towels
    - Hand soap
    - Disposable gloves
    - Garbage bags
    - Drain cleaning enzymes
    - Automated paper towel dispensers
  - Light bulbs
    - T 12 8' linear fluorescent bulbs (75w)
    - T 12 4' linear fluorescent bulbs (34w)
2. Custodial Task Items - *Custodial and cleaning services including:*
  - Dispersal of paper products
  - Vacuuming of carpets
  - Sweeping and mopping of hard floors
  - Stripping and waxing of hard floors, as applicable
  - Carpet cleaning, as needed
  - Replacement of bulbs and lamps
  - Dusting
  - Glass cleaning
  - Cleaning and disinfecting lavatories
  - Trash removal and disinfecting of containers inside the building
  - Minor drain and toilet unclogging
  - General cleaning
  - Cleaning the dumpster enclosure of debris
3. Payment of all Utility Invoices
4. Exterminator
5. Winter Walk-off Mats
6. Central alarm monitoring
  - Fire Alarm System
  - Security System
7. Fire extinguisher inspection and service – annual
8. Back-flow preventer testing and repairs – annual

## **B. Major Building Systems Maintenance & Repair**

Lessee shall be responsible for all of the following tasks and supplies at its cost.

1. Building Maintenance Task Items - *Building maintenance and repair task list including:*
  - Replacement of light ballast or light fixture repair
  - Plumbing maintenance (including clogs and blockages of toilets, sinks, etc.), repair and replacement, including repairing leaks and repair or replacement of broken fixtures or components
  - Cleaning of air handlers, condensers and evaporators and the replacement of filters
  - Maintenance and repair of utility systems (i.e., sewer, water, gas, electric, HVAC [i.e. air conditioning units, boilers, steam lines and radiators], telecommunications, Internet, data)
  - Repair of doors and security equipment. Including locks and door hardware.
  - Routine maintenance and repair of the windows and screens on the interior and exterior including the repair or replacement of windows panes
  - Spot painting to address wall repairs that were needed due to water leaks or impact
  - Replace damaged/stained ceiling or floor tiles as needed
  - Correction of Life Safety inspection violations
  - Routine maintenance of roof, rooftop drains and gutters
  - Routine maintenance of window, door and trim caulking, as needed.
2. Elevator Maintenance
  - Monthly inspection and routine service with work log
3. Fire alarm system & component annual testing
  - Fire alarm system
  - Fire pump
  - Kitchen exhaust hood inspection – semi-annual inspections
  - Wet/dry fire sprinkler systems
4. Boiler system:
  - Provide all chemicals
  - Provide system treatment for steam heating plant with monthly testing log
  - Provide routine maintenance and operational tasks i.e. blow down boilers, feed water tank check, return condensate tank checks and trap maintenance
  - Provide Water Softener System service, inspection and salt
5. Provide HVAC preventative maintenance and service
6. Repair of: All capital equipment, major portions of the Building (such as the roof), and utility systems (such as sewer, water, and heating),

## **City's Responsibilities**

1. Exterior maintenance, including lighting, existing signage, lawns, walkways, sidewalks and tree lawns adjacent to the property, playground, athletic facilities, steps, and landscaping, but excluding the Learning Garden and lessee/tenant specific areas
2. Parking lot and driveway maintenance (lot striping and crack sealing as scheduled)

3. Snow and ice removal of the parking lot and public sidewalks
4. City to empty dumpster once a week
5. Capital improvement costs (10-year Capital Plan) as approved by City Council in annual capital budget.
6. Capital replacement costs for which maintenance and repair documentation demonstrates that replacement is necessary. All capital equipment, major portions of the Building such as the roof, and utility systems (such as sewer, water, and heating), shall be maintained and repaired as needed by ECEC, as listed above under ECEC's Responsibilities. The City shall only be responsible for capital replacement after a demonstration by Lessee that replacement is necessary. There are typically three benchmarks to determine when equipment should be replaced versus repaired:
  - The cost of the repair exceeds 60% of the cost to replace.
  - Parts are no longer available.
  - The equipment has exceeded its lifecycle and has become unreliable, and if neither of the above two conditions exist.

Lessee shall regularly provide the City with copies of invoices and reports as to capital repairs and maintenance. These documents shall be provided at least quarterly, and if and when Lessee requests that the City replace certain capital equipment or portions of the Building.



ORDINANCE NO.

BY:

Authorizing a lease agreement between the City and Early Childhood Enrichment Center Inc. (ECEC) for the City-owned property known as the Shaker Family Center at Sussex, located at 19824 Sussex Road, for the period January 1, 2023 through June 30, 2024, and payment to ECEC of \$200,000 for the maintenance and repair of the property, and declaring an emergency.

WHEREAS, the City purchased the property located at 19824 Sussex Road, from the Shaker Heights Board of Education pursuant to an agreement dated October 24, 1995, and the property became known as the Shaker Family Center at Sussex ("SFC Facility"); and

WHEREAS, the City entered into a lease for the SFC facility with the Early Childhood Enrichment Center Inc. (ECEC) for the period January 1, 2021 through December 31, 2022; and

WHEREAS, the City desires to enter into an eighteen (18) month lease agreement with ECEC beginning January 1, 2023, at a rental amount of \$1.00 per year, and the City has agreed to pay ECEC \$200,000 in consideration for its maintenance and repair of the SFC Facility; and

WHEREAS, this Council finds that it is in the City's best interests to continue to operate the SFC Facility to provide the community early childhood education and enrichment programs through a lease to ECEC.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Shaker Heights, State of Ohio:

Section 1. The Mayor is hereby authorized and directed to enter into a Lease Agreement with Early Childhood Enrichment Center Inc. (ECEC) for the City-owned property known as the Shaker Family Center at Sussex located at 19824 Sussex Road, at a rental amount of \$1.00 per year, for a period of eighteen months (January 2023-June 2024). Said Lease Agreement shall be in the form as approved by the Director of Law.

Section 2. The Mayor is hereby authorized and directed to pay ECEC for the maintenance and repair of the SFC Facility in the amount of \$200,000 for the year 2023.

Section 3. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare for the reason that it is necessary in the current operation of the City, and because the prior lease expired in 2022, and funds are needed to maintain and repair the property and, therefore, this ordinance shall take effect immediately upon its enactment and approval by the Mayor.

Enacted

Approved this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
DAVID E. WEISS, Mayor

Attest:

\_\_\_\_\_  
JERI E. CHAIKIN  
Clerk of Council

coun23/0307ECEClease